

Serial No. 10/773,250

Attorney Docket # 2270-001

REMARKS

**Examiner has rejected claims 1-2 and 6-7 under 35 USC 102(b) as being anticipated by McKinnon US Patent 1,545,909 and contends McKinnon shows all of the claimed subject matter of a fence module in Figures 1-3.**

Applicant has currently amended the specification and claim 1 to more clearly define the arrangement of the stacked fence modules as being in a nested arrangement shown in Figures 4b, 4c and 5b as originally filed. Applicant believes that no new matter has been added as a result of the amendment, the subject matter having been shown in the figures as originally filed.

Applicant has previously amended claim 1 which more clearly defines the horizontal member in the instant application as being a unitary member which is distinguished from the hinged bracket 11 of McKinnon. Support for the addition of the term "unitary" to both the claims and the specification was found in Figures 1a-5b as originally filed. Further, Applicant also previously amended claim 1 to clearly define the angle arm as being attached to the inside side edge of each of the substantially vertical and the horizontal members and that the vertical and horizontal members are in the same plane. Support was found in the specification at page 7, line 3, as originally filed and in the figures, particularly Fig. 2a and Fig. 5a as originally filed.

McKinnon cannot stack in a nested arrangement. Firstly, McKinnon provides an alternate method and accommodation for stacking. Secondly, the physical arrangement of McKinnon's fence makes stacking modules, nested within one another, impossible. Applicant wishes to direct the Examiner's attention to column 3 lines 20-26 wherein McKinnon states that removing the fastening bolts from the various parts of the fence permits the fence to be disassembled for packing in a small space. McKinnon does not contemplate stacking the assembled fences having the angle arms of each successive module fitting between the horizontal and substantially vertical members of a previous module.

Even if McKinnon were to fold the fence modules at the pivoting connections described in the specification and shown in the drawings, the modules would merely pile on top of one another and would not stack nested within one another as in the instant invention.

Contrary to Examiner's assertion that McKinnon's support 9 or angle arm 9 attached to the "inside edge" as claimed by Applicant, instead, the support 9 or angle arm of McKinnon is attached at an outside edge of end member 4 and the hinged bracket 11 is connected at an outside edge of 4 and an inside edge of member 9. Regardless whether one defines the attachment of McKinnon as being "inside" or "outside", the fact that the support 9 is attached on opposing ends to the opposite side of the end member and hinged bracket and are not in the same plane causes the support 9 to impinge the space between the ends of

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McKinnon's modules and thus they are incapable of stacking within one another in a nested arrangement. If an attempt were made to stack the end supports of McKinnon, each successive end support would have to be offset sideways; the opposing end supports would have to move apart to provide sufficient space for stacking within one another. As the end supports are rigidly connected through the lateral and longitudinally extending members 2, they cannot move apart; therefore McKinnon is inoperative for stacking as is taught by Applicant.

Applicant has previously enclosed photographs of a mock up of McKinnon and a mock up of Applicant's invention as Appendix 1 and 2, respectively, to assist the Examiner in viewing the distinction between the two apparatus. As shown for McKinnon in Appendix 1, member 11 interferes with stacking and causes a lateral shifting of the ends support for each successive fence, impossible where two ends supports are in fixed spaced relation as connected by a longitudinal member 2 and thus must move apart to stack. In contradistinction, in applicant's fence in Appendix 2, two mocked up end support portions of two fence modules standing on edge according to Applicant's embodiments, it is illustrated that Applicant's end supports can stack in a nested arrangement without any successive offsetting as is the case with McKinnon.

With regard to claims 2 and 6, Applicant respectfully submits that no contemplation is found in McKinnon to stack assembled fence modules within one another as in Applicant's invention and therefore one would not look to adding spacers between the junction of the angle arm and the horizontal and substantially vertical members to provide additional tolerance for stacking.

Further, for completeness, addition of a spacer to the hinged horizontal bracket of McKinnon and the support member 9 would not relieve the problem encountered due to the connection of the horizontal hinged bracket to the inside of the support member 9, but would exacerbate the non-stackable interference, and thus would not act to provide additional tolerance between the modules, if they were to be stacked as described in Applicant's application.

Applicant believes that claim 1 is clearly distinguished over McKinnon and is therefore in condition for allowance. Further, Applicant believes that claims 2-8 which depend therefrom are also in condition for allowance.

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**Examiner has rejected claims 3-4 and 8-11 under USC 103(a) as being unpatentable over McKinnon as applied to claim 1 above and further in view of Faught US Patent 300,455.**

Applicant respectfully submits that claims 3, 4, 7 and 8 depend from claims which Applicant believes are in condition for allowance, claim 1 being distinguished from apparatus of McKinnon as previously discussed.

Applicant has amended claim 9 to more clearly define the arrangement of the stacked fence modules as being in a nested arrangement shown in Figures 4b, 4c and 5b as originally filed. Applicant believes that no new matter has been added as a result of the amendment, the subject matter having been shown in the figures as originally filed.

Further, Applicant has previously amended claim 9 to more clearly describe that the perimeter fence, created using the modules of the instant invention, forms an enclosure which is distinguished from that of McKinnon which teaches a substantially linear fence following a roadway or the like. Further, the addition of the term "unitary" in regard to the horizontal member further distinguishes Applicant's invention from that of McKinnon which uses a hinged bracket. Applicant previously amended the claim to define the angle arm as being attached to an inside side edge of the vertical and horizontal members and that the vertical and horizontal members are in the same plane which is not found in McKinnon.

With regard to claims 9 -11, Applicant respectfully wishes to point out to the Examiner that McKinnon does not teach or contemplate joining modules together to create an enclosure as the purpose of the fence taught by McKinnon is to prevent snow from building up on a roadway. The fence of McKinnon is created using discreet panels of undetermined length to form a substantially linear fence. Further, McKinnon does not teach joining the linearly arranged panels or modules to one another. Thus one would not contemplate using attachments means as claimed in claim 10, such as loops and pins as claimed in claim 11. Further, one would not contemplate the need for a man door formed therein, the subject matter of claim 8 or that the modules would be used to form a polygonal shape as claimed in claim 9.

Applicant believes that claims 3-4 and 8- 11 are in condition for allowance.

Applicant wishes to thank the Examiner for the allowance of claim 13 and for the conditional allowance of claims 5 and 12 if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Applicant believes that no new matter has been introduced as a result of the amendments and respectfully requests reconsideration and allowance of the claims currently on file.

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Reconsideration and allowance of claim 1-14 now on file is respectfully requested.

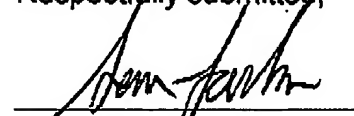
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Respectfully submitted,



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